

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN F. VERNACCHIO,

Plaintiff,

v.

RON DAVIS, et al.,

Defendants.

Case No. [19-cv-07171-SI](#)

**ORDER DENYING REQUEST FOR
COUNSEL**

Re: Dkt. No. 28

Plaintiff requests that counsel be appointed to represent him in this action. A district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *See id.* Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under § 1915(e)(1). Here, exceptional circumstances requiring the appointment of counsel are not evident. Plaintiff stated cognizable claims regarding his discharge from a prison job, but the court cannot at this time determine the likelihood of success on the merits because defendants have not yet made their position known. Plaintiff adequately articulated his claims *pro se* and the claims are not particularly complex. Since filing this action, plaintiff has been released from prison; in the free world, he has better access to resources to learn more about prosecuting his claims and to prepare for defendants' motion for summary judgment expected to be filed in January 2021. For these reasons, the request for appointment of counsel is DENIED. Docket No. 28.

IT IS SO ORDERED.

Dated: December 4, 2020



SUSAN ILLSTON
United States District Judge